

From: Darrell Townsley [Darrell.Townsley@wcom.com]
Sent: Friday, March 22, 2002 3:35 PM
To: McClerren, Sam
Cc: William Haas; doug trabaris
Subject: Part 731 Comments

Sam:

Earlier today, Jason Hendricks of GVNW circulated to WorldCom, AT&T and McLeodUSA a copy of the draft rule and comments that we understand have now been sent to you. We want to let you know, that in place of filing official comments (except that WorldCom will be filing a separate comment with respect to special access), we fully support Mr. Hendricks' draft rule and, with one exception, we fully support Mr. Hendricks' comments.

The one exception is with respect to the "back-up" proposal concerning the mechanism that would trigger wholesale quality of service requirements for CLECs. In the full paragraph that appears on page three of Mr. Hendricks' comments, we would recommend a change to the trigger mechanism, which is reflected in the modified language below. With this one substantive change, we fully support both the proposed rule and comments submitted by Mr. Hendricks. With our proposed change, the full paragraph appearing on page three of Mr. Hendricks' comments would read as follows:

Under GVNW's proposal, carriers classified as Level 4 carriers can be reclassified as Level 2 carriers if their exemption from Section 251© of the Act is revoked pursuant to Section 251(h) of the Act. Prior to a Level 4 carrier becoming subject to Level 2 requirements, the Commission should rule upon a number of issues similar to those that the Commission should rule upon before a Level 3 carrier can be subject to Level 2 requirements. Tying the CLEC exemption to Section 251© makes sense because of the inherent differences in obligations currently placed on CLECs relative to ILECs for wholesale services under the Act. If Staff is uncomfortable with the 251© distinction for CLECs, GVNW, AT&T, McLeodUSA and WorldCom recommend that Staff at least put CLECs into an exempt Level 4 category but, instead, make the trigger for compliance with the Level 2 standards based upon a bona fide request from another carrier that the Level 4 CLEC become a Level 2 carrier. Then, the Commission can conduct an expedited hearing to determine if the reclassification is justified, weighing factors such as the expected quantity of wholesale services to be provided, and the balancing of the additional regulation with the public interest. Other than regulatory "parity" concerns that all carriers should be subject to the same standards regardless of any kind of business need or valid public policy justification (an issue now made moot by the establishment of Levels), no party has expressed a need to have wholesale service standards apply to CLECs. Non-ILEC-to non-ILEC wholesale relationships, as incidental (and nonexistent) as they are, are best handled in contracts between the parties (and not in rules) due to the lack of disincentives for providing quality service in these relationships as are inherent in an ILEC-to-competitor relationship. This is presumably the rationale behind the distinction between 251(b) requirements and 251(c) requirements. Inclusion of CLECs in Level 2 will only complicate Staff's efforts to pass Code Part 731 due to modifications that may be needed to address concerns of large CLECs who would be subject to the rule.